

MICHIGAN SUPREME COURT



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contact: Marcia McBrien | (313) 972-3219 or (517) 373-0129

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NEW RULES FOR JUDICIAL WATCHDOG GROUP ADOPTED BY MICHIGAN SUPREME COURT

LANSING, MI, January 21, 2003 – For the first time in 30 years, rules governing judicial misconduct proceedings have undergone major revisions, the Michigan Supreme Court announced today.

The Justices arrived at the revisions after holding a public hearing and requesting comments from the legal community and the public at large. The Court began its comprehensive review of the rules in response to requests from a number of individuals and groups, including the Judicial Tenure Commission (JTC), the state agency which investigates allegations of judicial misconduct and recommends disciplinary action.

In an order released today, the Court said that rule changes affecting the JTC will go into effect immediately. The revisions “sharpen the commission’s investigative tools,” according to a staff comment in the order.

Revisions also clarify the line between the JTC’s “investigative and prosecutorial functions” and its role as a decision-maker in judicial misconduct cases, the staff comment indicates. Other changes strengthen accused judges’ due process rights by requiring “earlier and fuller” notice of misconduct allegations, according to the staff comment.

In August 1968, voters passed an amendment to the state constitution to create the JTC. The Court’s order notes that “These are the first major revisions to the rules governing the Judicial Tenure Commission since the original rules were adopted by the Supreme Court more than 30 years ago” in response to the constitutional amendment.

The Judicial Tenure Commission consists of staff, who investigate and prosecute judicial misconduct, and a nine-member Board of Commissioners. The commissioners include two attorneys, five judges, and two non-lawyers. Non-lawyer members are appointed by the Governor. Attorney members and one judge are chosen in a state-wide mail election by members of the State Bar of Michigan. Other judge members are elected by their peers in a mail vote conducted by the State Court Administrative Office. Each commissioner serves a three-year term.

The Michigan Constitution and the JTC rules provide that a judge is subject to censure, suspension or removal from office for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice.

A misconduct proceeding begins with an allegation of misconduct, known as a “request for investigation.” After investigation, JTC staff present their findings to the commissioners. The commissioners have a number of options, the most serious of which is proceeding with a formal complaint against the judge. If formal charges are filed, the JTC will hold a public hearing at which evidence of the judge’s misconduct will be presented. The commissioners then review the record of the case and recommend sanctions to the Supreme Court. The Court reviews the case and may impose “a greater, lesser, or entirely different sanction” than that recommended by the JTC board. The most serious sanction the Court can impose is to remove a judge from office.

Revisions to the JTC rules state that JTC staff “shall not be present during the deliberations of the commission [board] or participate ... in the decision to file formal charges or to recommend action by the Supreme Court ... and shall have no ex parte communication with the commission regarding a formal complaint that the commission has authorized.” These and other amendments “encapsulate in formal rules several unwritten practices of the commission that separate the investigative and prosecutorial functions of its staff from the commission’s decision-making function,” according to the staff comment on the new rules.

Other provisions:

- permit accused judges to appear informally before the JTC during the investigation phase of a misconduct proceeding, to give the judge an opportunity to present information;
- defines “misconduct in office” to explicitly include “misuse of judicial office” for the judge’s or another person’s “personal advantage or gain”;
- permits the JTC to expedite judicial misconduct proceedings on its own initiative or at the direction of the Supreme Court;
- provides sanctions, including contempt of court, for accused judges and witnesses who disobey subpoenas and “other lawful order” of the JTC; and
- require the JTC to hold an investigation if the initial request for investigation is filed “less than 90 days before an election in which the respondent [judge] is a candidate,” unless two-thirds of JTC board members “determine that the public interest and the interests of justice require otherwise.”

For the complete text of the revised rules, visit the “One Court of Justice” web site at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/1999-31-012103.pdf>. For more information about the Judicial Tenure Commission, visit the JTC’s web site at <http://www.jtc.courts.mi.gov/index.htm>.